

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DZ BANK AG DEUTSCHE
ZENTRAL-
GENOSSENSCHAFTSBANK,
FRANKFURT AM MAIN,
NEW YORK BRANCH,
Plaintiff,

V.

JANEL APOSTOL INSURANCE
AGENCY CORPORATION and
JANEL APOSTOL,
Defendants.

CIVIL CASE NO. H-10-1635


MEMORANDUM AND ORDER

This case is before the Court on the Motion to Dismiss Guaranty Against Janel Apostol Personally (“Motion to Dismiss”) [Doc. # 27] filed *pro se* by Defendant Janel Apostol. In the current Motion to Dismiss, as in a prior Motion to Dismiss, Defendant Apostol challenges the documents relied upon by Plaintiff DZ Bank AG Deutsche Zentral-Genossenschaftsbank, Frankfurt AM Main, New York Branch (“Bank”). As was true with the prior motion, this Motion to Dismiss was filed well after Defendant filed an Answer [Doc. # 6] on June 2, 2010, and is untimely. *See* FED. R. CIV. P. 12(b).

Additionally, as stated in the Memorandum and Order [Doc. # 18] denying the prior motion, the Bank has adequately *pled* its claims against Defendant. Bank has adequately alleged that it has full ownership of the Personal Guaranty executed by Defendant Apostol to guarantee payment of the underlying loan, which is currently in default. These allegations are sufficient to withstand a motion to dismiss. Apostol's challenge to the Bank's ownership of the Personal Guaranty may be raised, if appropriate, in a motion for summary judgment to be filed after the completion of discovery. Accordingly, it is hereby

ORDERED that Apostol's second Motion to Dismiss [Doc. # 27] is **DENIED**.

SIGNED at Houston, Texas, this 9th day of **February, 2011**.



Nancy F. Atlas
United States District Judge